

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Everlight Electronics Co., Ltd.,

Plaintiff,

v.

Bridgelux, Inc.,

Defendant.

Case Number: 4:17-cv-3363-JSW

[EVERLIGHT PROPOSED] PROTECTIVE
ORDER FOR LITIGATION INVOLVING
PATENTS, HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION AND/OR
TRADE SECRETS

Bridgelux, Inc.,

Counterclaim Plaintiff,

v.

Everlight Electronics Co., Ltd. and
Everlight Americas, Inc.,

Counterclaim Defendants.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the

applicable legal principles. As set forth in Section 14.4 below, this Protective Order does not entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to "~~HIGHLY~~ ~~CONFIDENTIAL—ATTORNEYS' EYES ONLY~~CONFIDENTIAL" information in this matter.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE."

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive

1 “Confidential Information or Items” representing computer code and associated comments and revision
2 histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the
3 algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party
4 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

5 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does
6 not include Outside Counsel of Record or any other outside counsel.

7 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not
8 named as a Party to this action.

9 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are
10 retained to represent or advise a party to this action and have appeared in this action on behalf of that party or
11 are affiliated with a law firm which has appeared on behalf of that party.

12 2.13 Party: any party to this action, including all of its officers, directors, employees, consultants,
13 retained experts, and Outside Counsel of Record (and their support staffs).

14 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this
15 action.

16 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
17 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
18 retrieving data in any form or medium) and their employees and subcontractors.

19 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
20 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
21 CONFIDENTIAL – SOURCE CODE.”

22 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
23 Party.

24 3. SCOPE

25 The protections conferred by this Order cover not only Protected Material (as defined above), but
26 also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or
27 compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their
28 Counsel that might reveal Protected Material. However, the protections conferred by this Order do not cover

1 the following information: (a) any information that is in the public domain at the time of disclosure to a
2 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
3 publication not involving a violation of this Order, including becoming part of the public record through trial
4 or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
5 Receiving Party after the disclosure from a source who obtained the information lawfully and under no
6 obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed
7 by a separate agreement or order.

8 4. DURATION

9 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
10 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.
11 Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with
12 or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals,
13 rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or
14 applications for extension of time pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
17 Party that designates information or items for protection under this Order must take care to limit any such
18 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to
19 do so, the Designating Party must designate for protection only those parts of material, documents, items, or
20 oral or written communications that qualify – so that other portions of the material, documents, items, or
21 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
22 Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
24 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard
25 the case development process or to impose unnecessary expenses and burdens on other parties) expose the
26 Designating Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that it designated for
28 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,

1 that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
3 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
4 Material that qualifies for protection under this Order must be clearly so designated before the material is
5 disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
8 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
9 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
10 CONFIDENTIAL – SOURCE CODE” to each page that contains protected material. If only a portion or
11 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
12 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
13 portion, the level of protection being asserted.

14 A Party or Non-Party that makes original documents or materials available for inspection need not
15 designate them for protection until after the inspecting Party has indicated which material it would like
16 copied and produced. During the inspection and before the designation, all of the material made available for
17 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
18 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
19 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
20 producing the specified documents, the Producing Party must affix the appropriate legend
21 (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY
22 CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected Material. If only a portion or
23 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
24 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
25 portion, the level of protection being asserted.

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating
27 Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected
28 testimony and specify the level of protection being asserted. When it is impractical to identify separately

1 each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony
 2 may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing,
 3 or other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the
 4 testimony as to which protection is sought and to specify the level of protection being asserted. Only those
 5 portions of the testimony that are appropriately designated for protection within the 21 days shall be covered
 6 by the provisions of this Protective Order. Alternatively, a Designating Party may specify, at the deposition
 7 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
 8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a deposition, hearing, or other
 10 proceeding to include Protected Material so that the other parties can ensure that only authorized individuals
 11 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
 12 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as
 13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 Transcripts containing Protected Material shall have an obvious legend on the title page that the
 15 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
 16 line numbers as appropriate) that have been designated as Protected Material and the level of protection
 17 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
 18 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall be
 19 treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 20 ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be
 21 treated only as actually designated.

22 (c) for information produced in some form other than documentary and for any other tangible items,
 23 that the Producing Party affix in a prominent place on the exterior of the container or containers in which the
 24 information or item is stored the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
 25 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” If only a portion or
 26 portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall
 27 identify the protected portion(s) and specify the level of protection being asserted.

28 5.3 Inadvertent Failures to Designate. Any written materials, including without limitation

documents, briefs, interrogatory responses, and responses to requests for admission, but excluding deposition or other pretrial or trial testimony, that have been inadvertently produced without identification as to their confidential nature as provided in paragraph 5.2 above may be so designated by the Designating Party, within a reasonable time following the discovery that the document or information has been produced without such designation by written notice to counsel for the party receiving the material to be designated, and that party thereafter shall mark those materials with the appropriate legend. Materials designated under this paragraph shall be treated in all respects as if they had been designated in compliance with paragraph 5.2 above.

If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge

1 process only if it has engaged in this meet and confer process first or establishes that the Designating Party is
2 unwilling to participate in the meet and confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the
4 Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in
5 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or
6 within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
7 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the
8 movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
9 the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if
10 applicable) shall automatically waive the confidentiality designation for each challenged designation. In
11 addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if
12 there is good cause for doing so, including a challenge to the designation of a deposition transcript or any
13 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent
14 declaration affirming that the movant has complied with the meet and confer requirements imposed by the
15 preceding paragraph.

16 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
17 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
18 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
19 Designating Party has waived the confidentiality designation by failing to file a motion to retain
20 confidentiality as described above, all parties shall continue to afford the material in question the level of
21 protection to which it is entitled under the Producing Party's designation until the court rules on the
22 challenge.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced
25 by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or
26 attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons
27 and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party
28 must comply with the provisions of section 15 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
2 manner that ensures that access is limited to the persons authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the
4 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
5 item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said
7 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation
8 and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
9 A;

10 (b) the ~~officers, directors, and employees (including House Counsel)~~ Designated House Counsel
11 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors
18 to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
19 and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
21 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
22 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or
23 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may
24 not be disclosed to anyone except as permitted under this Protective Order.

25 (g) the author or recipient of a document containing the information or a custodian or other
26 person who otherwise possessed or knew the information.

27 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY
28 CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the court or

permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

~~(b) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;¹~~

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Designated House Counsel or Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated

¹ ~~This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.”~~

1 ~~“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”~~ pursuant to paragraph 7.32(b) first must
 2 make a written request to the Designating Party that (1) sets forth the full name of the Designated House
 3 Counsel and the city and state of his or her residence and (2) describes the Designated House Counsel’s
 4 current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to
 5 determine if House Counsel is involved, or may become involved, in any competitive decision-making.

6 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a
 7 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been
 8 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
 9 SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party
 10 that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 11 “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to
 12 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary
 13 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s),
 14 (5) identifies each person or entity from whom the Expert has received compensation or funding for work in
 15 his or her areas of expertise or to whom the expert has provided professional services, including in
 16 connection with a litigation, at any time during the preceding five years,² and (6) identifies (by name and
 17 number of the case, filing date, and location of court) any litigation in connection with which the Expert has
 18 offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during
 19 the preceding five years.

20 (b) A Party that makes a request and provides the information specified in the preceding
 21 respective paragraphs may disclose the subject Protected Material to the identified Designated House
 22 Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection
 23 from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

24 (c) A Party that receives a timely written objection must meet and confer with the Designating
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 27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert
 28 should provide whatever information the Expert believes can be disclosed without violating any confidentiality
 agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating
 Party regarding any such engagement.

1 Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of
 2 the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated
 3 House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
 4 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must
 5 describe the circumstances with specificity, set forth in detail the reasons why disclosure to Designated
 6 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,
 7 and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be
 8 accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement
 9 (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by
 10 the Designating Party for its refusal to approve the disclosure.

11 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
 12 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the
 13 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its
 14 Designated House Counsel or Expert.

15 7.5 Additional Parties. In the event that an additional party joins or is joined in this action, it
 16 shall not have access to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 17 ONLY" Information until the newly joined party or its counsel has executed and served on all parties its
 18 agreement to be fully bound by this Order or an alternative protective Order which is satisfactory to all
 19 parties.

20 8. PROSECUTION BAR

21 Absent written consent from the Producing Party, any individual who receives access to
 22 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
 23 CODE" information shall not be involved in the prosecution of patents or patent applications relating to the
 24 subject matter of this action, including without limitation the patents asserted in this action and any patent or
 25 application claiming priority to or otherwise related to the patents asserted in this action, before any foreign
 26 or domestic agency, including the United States Patent and Trademark Office ("the Patent Office"). For
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purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.³ To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and shall end two (2) years after final termination of this action.

9. SOURCE CODE

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate source code as “HIGHLY CONFIDENTIAL – SOURCE CODE” if it comprises or includes confidential, proprietary or trade secret source code.

(b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of Designated House Counsel.

(c) Any source code produced in discovery shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon location. The source code shall be made available for inspection on a secured computer in a secured room without Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device. The Producing Party may visually monitor the activities of the Receiving Party’s representatives during any source code review, but only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

(d) The Receiving Party may request paper copies of limited portions of source code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for

³ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

1 deposition or trial, but shall not request paper copies for the purpose of reviewing the source code other than
 2 electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all such
 3 source code in paper form, including bates numbers and the label “HIGHLY CONFIDENTIAL – SOURCE
 4 CODE.” The Producing Party may challenge the amount of source code requested in hard copy form
 5 pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing
 6 Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute
 7 resolution.

8 (e) The Receiving Party shall maintain a record of any individual who has inspected any portion
 9 of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any
 10 printed portions of the source code in a secured, locked area. The Receiving Party shall not create any
 11 electronic or other images of the paper copies and shall not convert any of the information contained in the
 12 paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such
 13 additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying
 14 expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case.
 15 Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day
 16 and must not be given to or left with a court reporter or any other unauthorized individual.

17 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 18 LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure
 20 of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
 21 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of the
 23 subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
 25 litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order.
 26 Such notification shall include a copy of this Protective Order; and

27 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
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1 Party whose Protected Material may be affected.⁴

2 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court
3 order shall not produce any information designated in this action as “CONFIDENTIAL,” “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” or “HIGHLY CONFIDENTIAL – SOURCE CODE”
5 before a determination by the court from which the subpoena or order issued, unless the Party has obtained
6 the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking
7 protection in that court of its confidential material – and nothing in these provisions should be construed as
8 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
10 LITIGATION

11 (a) The terms of this Order are applicable to information produced by a Non-Party in this action
12 and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
13 “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in connection
14 with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions
15 should be construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s
17 confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to
18 produce the Non-Party’s confidential information, then the Party shall:

19 1. promptly notify in writing the Requesting Party and the Non-Party that some or all
20 of the information requested is subject to a confidentiality agreement with a Non-Party;

21 2. promptly provide the Non-Party with a copy of the Protective Order in this
22 litigation, the relevant discovery request(s), and a reasonably specific description of the information
23 requested; and

24 3. make the information requested available for inspection by the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
26 _____

27 ⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to
28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from
which the subpoena or order issued.

1 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's
 2 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
 3 order, the Receiving Party shall not produce any information in its possession or control that is subject to the
 4 confidentiality agreement with the Non-Party before a determination by the court.⁵ Absent a court order to
 5 the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its
 6 Protected Material.

7 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
 9 any person or in any circumstance not authorized under this Protective Order, the Receiving Party must
 10 immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best
 11 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom
 12 unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to
 13 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

14 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
 16 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
 17 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 18 whatever procedure may be established in an e-discovery order that provides for production without prior
 19 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
 20 agreement on the effect of disclosure of a communication or information covered by the attorney-client
 21 privilege or work product protection, the parties may incorporate their agreement in a stipulated protective
 22 order submitted to the court.

23 If information subject to a claim of attorney-client privilege, work product and/or any other privilege
 24 is inadvertently produced to a party at any time during the course of this case, such production shall in no
 25 way prejudice or otherwise constitute a waiver of or estoppel as to, any claim of attorney-client privilege,
 26

27
 28 ⁵ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party
 and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 work product or any other privilege to which the Producing Party would otherwise be entitled.

2 For purposes of this order inadvertent production is defined as: without actual knowledge that
3 producing the information will waive any privilege, provided that (a) disclosure of such privileged or
4 protected material was not made with intent to waive the privilege or protection, and (b) the holder promptly
5 takes reasonable steps to rectify the error, including (if applicable) compliance with Fed. R. Civ. P. 26(b)(5)).

6 Pursuant to Fed. R. Evid. 502(d) and (e), to the fullest extent permitted by law, the Court orders that
7 the privilege or protection shall not be waived by disclosure connected with the litigation, in any proceeding,
8 state or federal, by any party or any other person making disclosure in this case.

9 14. MISCELLANEOUS

10 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
11 modification by the court in the future.

12 14.2 Right to Assert Other Objections. No Party waives any right it otherwise would have to
13 object to disclosing or producing any information or item on any ground not addressed in this Protective
14 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material
15 covered by this Protective Order.

16 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and
17 regulations relating to the export of technical data contained in such Protected Material, including the release
18 of such technical data to foreign persons or nationals in the United States or elsewhere. The Producing Party
19 shall be responsible for identifying any such controlled technical data, and the Receiving Party shall take
20 measures necessary to ensure compliance.

21 14.4 Filing Protected Material. Without written permission from the Designating Party or a court
22 order secured after appropriate notice to all interested persons, a Party may not file in the public record in
23 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply
24 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order
25 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
26 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,
27 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request
28 to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the

Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

14.5 Privilege Logs. With respect to materials created after the filing of the Complaint in this action, the parties are not required to prepare or exchange logs of such materials that are withheld based on a claim of privilege or immunity. Nothing in this provision abrogates the responsibility of parties to preserve and produce materials that are otherwise discoverable, regardless of their date of creation.

14.6 No Waiver Of Privilege; No Admission As To Admissibility. Nothing herein shall be deemed to waive any claim of privilege, work product, or other claim of confidentiality recognized by law, or shall be deemed an admission as to the admissibility in evidence of any facts or documents revealed in the course of disclosure.

15. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO ORDERED.

DATED: _____
 [Name of Judge]
 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]